

June 12, 2013

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: GN Docket No. 12-353, Comment Sought on the Technological Transition of the Nation's Communications Infrastructure; GN Docket No. 13-5, Technology Transitions Policy Task Force; WC Docket No. 13-149, Application Of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services; WC Docket No. 13-150, Application Of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services  
Notice of *Ex Parte* Meeting

Dear Ms. Dortch:

On June 10, 2013, Harold Feld, Senior Vice President, Jodie Griffin, Staff Attorney, and John Bergmayer, Senior Staff Attorney, of Public Knowledge (PK) met with the following members of the FCC's Technology Transitions Task Force: Henning Schulzrinne, Chief Technology Officer; Steve Wildman, Chief Economist; Sean Lev, Diane Griffin Holland, and Marcus Maher from the Office of the General Counsel; Lisa Gelb, William Dever, Albert Lewis, Rodney McDonald, and Timothy Stelzig from the Wireline Competition Bureau; David Turetsky, David Furth, and Timothy May from the Public Safety and Homeland Security Bureau; Patrick Halley from the Office of Legislative Affairs; and Jonathan Chambers from the Office of Strategy Planning and Policy Analysis.

PK noted the potentially precedent-setting nature of the recent § 214(a) request for permission to discontinue services filed by Verizon as it replaces its hurricane-damaged copper infrastructure with its new fixed wireless Voice Link service.<sup>1</sup> As hurricanes and other natural disasters continue to damage infrastructure at a point when carriers may prefer not to rebuild their copper networks, it seems likely that carriers will increasingly choose to rebuild their infrastructure with fixed wireless or VoIP service.

The immediate request by Verizon is therefore not a standard § 214(a) request, and the Commission should recognize that this application squarely presents some of the most fundamental issues currently before the Commission as part of the broader phone network transition. However, the unique circumstances following Sandy and the general lack of applicable precedent on what happens when a disaster destroys facilities and the provider intends to replace them with an entirely new service may make this the wrong vehicle for deciding these

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<sup>1</sup> See Section 63.71 Application of Verizon New York Inc. and Verizon New Jersey Inc., *Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-150 (June 7, 2013).

questions. The Commission should therefore explicitly limit the precedential nature of its decision on Verizon's pending § 214(a) request and treat it entirely as *sui generis*. Instead, the Commission should consider the broader policy issues presented by this application in the context of the overall phone network transition.

PK recognizes that there is nothing magic about copper, and that it may better serve the public convenience and necessity where facilities are destroyed to replace existing copper with new technologies. For Fire Island, Mantoloking, and other areas that will experience damaged communications networks in the future, the Commission should strike a balance between maintaining a controlled phone network transition that protects consumers and competition while simultaneously weighing the economic burden and inefficiency of rebuilding traditional copper TDM plant that is regarded as increasingly obsolete. As the Commission has previously stated, however, consumer protection must remain at the forefront when considering this and other transition issues.

PK urged the Commission to establish a process appropriate for situations where network infrastructure is damaged during emergencies and carriers wish to rebuild with new, untested services. The Commission should decide the basic issues underlying this process in a notice of inquiry or rulemaking proceeding to solicit public comment on how carriers and subscribers should proceed when handling post-disaster network damage.

In its inquiry or rulemaking, the Commission should decide the basic issues of a process specifically designed to handle post-disaster network change requests. The Commission should address the appropriate timing between when a carrier may proceed under Special Temporary Authority and when the carrier must file a § 214(a) request to permanently discontinue or impair service. PK noted that, at the latest, carriers should be required to file § 214(a) requests when it files state tariff amendments to reflect the changes in its service.<sup>2</sup>

PK urged the Commission to establish particular components of a post-disaster network change process. First, the Commission should establish that carriers are required to submit a filing that informs the Commission and the public about the new anticipated services from the carriers. Carriers should also be required to establish that their replacement services will be adequate substitutes for the services consumers have come to rely upon over the copper network.

Above all, as PK has stressed in its other comments before the Commission, the transition must not be a step backward. Consumers should not be worse off post-transition. There are important elements of TDM- and copper-based service whose loss would be a significant step backward for consumers (including calling card and collect call capabilities, among others). Carriers should show how they will continue to support those features, or the Commission

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<sup>2</sup> This requirement becomes more complicated if the disaster occurs in a state without any filing requirements. This is exactly why the Commission should solicit public comments and invite further thinking on what triggering events should require carriers to file § 214(a) requests. After all, it may not always be clear exactly when the decision is made to permanently discontinue service. Without sufficient guidance from the Commission, this could lead to delays in notice and public process.

should determine how to transition customers without leaving subscribers behind during the throes of disaster recovery.

The Commission should also establish that it will continue to treat the carrier's replacement service as a Title II telecommunications service at least until the Commission has resolved the complex issues raised by the phone network transition. The Commission cannot let natural disasters become opportunities for carriers to shortcut the deliberations currently underway to comprehensively consider how best to handle the phone network's transition to IP-based technologies. Otherwise, basic features of the phone network like a user's ability to choose her long distance provider or attach her own device, or long-established expectations around reliability and public safety access could fall by the wayside without so much as a deliberate, public debate.<sup>3</sup>

The Commission should inquire into a new post-disaster process because the § 214(a) process in itself is not very well-suited to handle situations where a network is taken down by a natural disaster and carriers decide not to rebuild their copper plant in response. The § 214(a) process was designed for situations where carriers affirmatively decide to shut down their network and have time to notify customers and request permission before service is actually shut down. Indeed, the § 214(a) process has already shown stress points when applied to emergency situations. After all, it took Verizon weeks to file its § 214(a) request, despite working diligently with FCC staff, due to difficulties notifying customers and confusion over what exactly is expected of a carrier in this type of situation.

In contrast, the Commission must have a post-disaster network change process that is robust enough to absorb unanticipated challenges in disaster recovery. It must be clear to carriers that there will be no self-help when it comes to the recovery process for natural disaster victims.

With regard to the specifics of the Fire Island/NJ Barrier Island request, PK does not contend that Verizon's recently submitted § 214(a) request should be rejected simply because the new service is not copper-based. However, regardless of the physical infrastructure used, the Commission should ensure that this transition does not constitute a step backward for subscribers. To this end, the Commission should be particular watchful for new limitations in services that disparately impact vulnerable communities, like restrictions on customers' use of calling cards, collect calls, and Life Alert systems. More broadly, the Commission should anticipate that a drop off in voice quality between the old and new networks will be a big deal for consumers, since those who have stayed on the copper network are more likely to care about the higher quality offered over copper.<sup>4</sup>

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<sup>3</sup> In this respect, the Commission could set a minimum threshold criteria for service during the pendency of the Commission's deliberations on the transition, and then require carriers to ultimately bring their networks up to the standards that are eventually set more broadly as part of the overall phone network transition. PK also notes the recent approval of commercial boosters, which carriers could be required to provide to enhance voice quality where necessary.

<sup>4</sup> One possible solution for a carrier switching to a fixed wireless service is for the Commission to require the carrier to attach wireless boosters to user devices that are not receiving the requisite level of service due to poor reception.

Inevitably there will be some features that cannot be supported by the new technology of a fixed wireless network. In those cases, the Commission should acknowledge when it is giving carriers permission to discontinue capabilities customers have come to expect and responsibly transition them off the service according to a set plan. It is particularly inappropriate for communities struggling to rebuild to lose unexpectedly capacities on which they have long relied. For small businesses in particular that depend on faxes, credit card transactions, and other electronic transactions to do business, the sudden and unanticipated loss of these services and the need to find potentially more expensive alternatives has significant impact.

PK noted that it seems fairly straightforward that Voice Link service is a Title II telecommunications service.<sup>5</sup> Voice Link is a voice service that is not mobile (unlike CMRS service) and uses the public switched telephone network. The Commission will therefore need to consider how obligations like those found in sections 251 and 271 of the Act apply to an infrastructure like Voice Link's. These considerations can occur either simultaneously with, or parallel to, consideration of Verizon's § 214(a) request.

PK also noted the challenging policy question presented by the fact that Verizon's retirement of its copper plant on Fire Island now means that it appears there is no wireline broadband provider at all in that location.<sup>6</sup> This type of issue needs much further public debate and deliberation to handle thoughtfully. PK mentioned that when the Commission classified wireline broadband service as a Title I service and declined to classify VoIP service, those decisions were made with the backstop of a Title II voice line available in all communities, which could potentially not be the case for an increasing number of communities as the transition continues.

Respectfully submitted,  
/s/ Jodie Griffin  
*Staff Attorney*  
Public Knowledge

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<sup>5</sup> See 47 U.S.C. § 153.

<sup>6</sup> A similar issue is brought up in communities like Mantoloking, where the community is going from two wireline providers to one.